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Attorneys for defendant:
NORMANDIN'S dba NORMANDIN
CHRYSLER JEEP DODGE RAM

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

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| ALAN BRINKER, individually and on behalf of all others similarly situated,<br><br>Plaintiff,<br><br>vs.<br><br>NORMANDIN'S, a California corporation, d/b/a NORMANDIN CHRYSLER JEEP DODGE RAM,<br><br>Defendant. | Case No. C14-03007 EJD<br><br>**ANSWER TO COMPLAINT**<br><br>Complaint Filed: July 1, 2014 |

Comes now defendant NORMANDIN'S dba NORMANDIN CHRYSLER JEED DODGE RAM, and in Answer to the Complaint of plaintiff ALAN BRINKER, admits, denies and alleges as follows:

## I. INTRODUCTION

1. In answering paragraph 1 of the Complaint, defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on

that basis, deny each and every allegation contained therein.

## II. PARTIES

2. In answering paragraph 2 of the Complaint, defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis, deny each and every allegation contained therein.

3. In answering paragraph 3 of the Complaint, defendant admits that it is a California corporation with its principal place of business in San Jose, California and that it is registered to do and is doing business in California.

## III. JURISDICTION AND VENUE

4. In answering paragraph 4 of the Complaint, defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis, deny each and every allegation contained therein.

5. In answering paragraph 5 of the Complaint, defendant admits that it is a California corporation doing business in California, but is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in said paragraph, and on that basis, deny each and every allegation contained therein.

6. In answering paragraph 6 of the Complaint, defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis, deny each and every allegation contained therein.

## IV. THE TELEPHONE CONSUMER PROTECTION ACT OF 1991, 47 U.S.C. §227

7. In answering paragraph 7 of the Complaint, defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis, deny each and every allegation contained therein.

8. In answering paragraph 8 of the Complaint, defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis, deny each and every allegation contained therein.

9. In answering paragraph 9 of the Complaint, defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis, deny each and every allegation contained therein.

10. In answering paragraph 10 of the Complaint, defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis, deny each and every allegation contained therein.

## V. FACTUAL ALLEGATIONS

11. In answering paragraph 11 of the Complaint, defendant admits it owns and operates an automobile dealership in San Jose, California and does business as Normandin Chrysler Jeep Dodge Ram.

12. In answering paragraph 12 of the Complaint, defendant admits that it sells and leases new and used automobiles and its website states that its "services include trusted Chrysler Jeep RAM and Dodge car repair [and] original Chrysler Jeep RAM and Dodge parts."

13. In answering paragraph 13 of the Complaint, defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis, deny each and every allegation contained therein.

14. In answering paragraph 14 of the Complaint, defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis, deny each and every allegation contained therein.

15. In answering paragraph 15 of the Complaint, defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis, deny each and every allegation contained therein.

16. In answering paragraph 16 of the Complaint, defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis, deny each and every allegation contained therein.

17. In answering paragraph 17 of the Complaint, defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis, deny each and every allegation contained therein.

18. In answering paragraph 18 of the Complaint, defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis, deny each and every allegation contained therein.

19. In answering paragraph 19 of the Complaint, defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis, deny each and every allegation contained therein.

## VI. CLASS ACTION ALLEGATIONS

20. In answering paragraph 20 of the Complaint, defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis, deny each and every allegation contained therein.

21. In answering paragraph 21 of the Complaint, defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis, deny each and every allegation contained therein.

22. In answering paragraph 22 of the Complaint, defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis, deny each and every allegation contained therein.

23. In answering paragraph 23 of the Complaint, defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis, deny each and every allegation contained therein.

24. In answering paragraph 24 of the Complaint, defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis, deny each and every allegation contained therein.

25. In answering paragraph 25 of the Complaint, defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis, deny each and every allegation contained therein.

26. In answering paragraph 26 of the Complaint, defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis, deny each and every allegation contained therein.

27. In answering paragraph 27 of the Complaint, defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis, deny each and every allegation contained therein.

## VII. FIRST CLAIM FOR RELIEF

**Violation of the Telephone Consumer Protection Act, 47 U.S.C. §227(b)(1)(A) – Cellular Telephone Calls**

28. In answering paragraph 28 of the Complaint, defendant incorporates by reference as though set forth in full its responses to paragraphs 1 through 27, inclusive.

29. In answering paragraph 29 of the Complaint, defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis, deny each and every allegation contained therein.

30. In answering paragraph 30 of the Complaint, defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis, deny each and every allegation contained therein.

31. In answering paragraph 31 of the Complaint, defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis, deny each and every allegation contained therein.

## VIII. SECOND CLAIM FOR RELIEF

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act, 47 U.S.C. §227(b)(1)(A) – Cellular Telephone Calls**

32. In answering paragraph 32 of the Complaint, defendant incorporates by reference as though set forth in full its responses to paragraphs 1 through 31, inclusive.

33. In answering paragraph 33 of the Complaint, defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis, deny each and every allegation contained therein.

34. In answering paragraph 34 of the Complaint, defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis, deny each and every allegation contained therein.

35. In answering paragraph 35 of the Complaint, defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis, deny each and every allegation contained therein.

## AFFIRMATIVE DEFENSES

Defendant asserts the following separate and distinct affirmative defenses:

1. The Complaint, and each cause of action, fails to set forth facts and allegations sufficient to constitute a cause of action against defendant.

2. The Complaint, and each cause of action, is uncertain, vague, ambiguous and unintelligible.

3. The alleged injuries or damages suffered by plaintiff, if any there be, were the sole and proximate result of the conduct of parties other than the answering defendant.

4. Plaintiff's damages, if any there be, were caused by plaintiff's own intentional or negligent acts, thus barring or limiting plaintiff's right to recovery.

5. Plaintiff's claims are barred by the applicable statute of limitations.

6. Plaintiff has waived any and all claims that he may have or had against defendant arising out of the transactions and occurrences alleged in the Complaint.

7. Plaintiff is estopped from asserting any and all claims that he may have or had against defendant arising out of the transactions and occurrences alleged in the Complaint.

8. Plaintiff failed to mitigate his damages, if any there be.

9. Plaintiff, at all relevant times, gave his consent, express or implied, to the alleged acts, omissions, and/or conduct of defendant.

10. The actions taken by defendant with respect to plaintiff were based on honest, reasonable and good faith belief in the facts as known or understood at that time.

11. The actions taken by defendant with respect to plaintiff were based on good cause as known or understood at that time.

12. Plaintiff's claims for statutory damages, including any penalties, fail to state claims sufficient to state a claim upon which said damages can be awarded.

13. Defendant's conduct with regard to plaintiff was privileged, justified and in good faith.

14. The Complaint, and each cause of action contained therein, is barred in that the damages allegedly suffered by plaintiff, if any, were caused by the superceding, intervening and/or independent negligence or intentional conduct of persons and entities, including plaintiff and his agents, servants and/or employees and were not the result of any act, omission or conduct of defendant.

15. The violation alleged by plaintiff, if any there was, was not intentional.

16. The violation alleged by plaintiff, if any there was, was the result of a bona fide error.

17. Defendant did not violate the Telephone Consumer Protection Act.

18. Plaintiff provided the telephone number to defendant without advising defendant it was a cellular number.

19. At the time plaintiff provided his cellular telephone number he did not identify it as a cellular number.

20. Plaintiff authorized the use of his cellular number by defendant.

21. Plaintiff had a pre-existing business relationship with defendant.

22. Plaintiff did not request defendant place his cellular number on a do not call list.

23. Plaintiff is not entitled to attorney's fees.

24. This action may not properly proceed as a class action because plaintiff's claims are not typical of the claims of each putative class member.

25. This action may not properly proceed as a class action because questions of law and fact allegedly common to the putative class do not predominate over the numerous questions affecting only putative class members.

26. This action may not properly proceed as a class action because a class action is not superior to other available methods for the fair and efficient adjudication of plaintiff's claims and any claims of putative class members.

27. This action may not properly proceed as a class action because plaintiff and his counsel are unable to fairly and adequately protect the interests of the putative class members

28. This action may not properly proceed as a class action because there are insurmountable difficulties that would be encountered in any attempt to proceed as a class action, including for reasons of due process.

29. Plaintiff has not described the claims in the Complaint with sufficient particularity and certainty to enable defendant to determine what additional defenses may be available to it. Defendant therefore reserves the right to assert all defenses which may be pertinent to, or arising from said Complaint, once the precise nature of such claims and causes of action are ascertained through discovery.

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**PRAYER**

WHEREFORE, having fully answered the Complaint, defendant prays as follows:

A. Plaintiff takes nothing by way of his Complaint;

B. The Complaint be dismissed with prejudice;

C. For costs of suit incurred herein, including attorneys' fees, expert fees and costs;

D. All other relief the Court deems necessary and appropriate to accord substantial justice.

Respectfully submitted,

DATED: August 25, 2014 **BUSTAMANTE & GAGLIASSO, APC**

By: /s/ Andrew V. Stearns
ANDREW V. STEARNS, on behalf of defendant NORMANDIN'S dba NORMANDIN CHRYSLER JEEP DODGE RAM